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COUNCIL 15, LOCAL 159, AFL-CIO

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

THE BOEING COMPANY,

Employer,

and

SOCIETY OF PROFESSIONAL
ENGINEERING EMPLOYEES IN
AEROSPACE, affiliated with
INTERNATIONAL FEDERATION OF
PROFESSIONAL & TECHNICAL
ENGINEERS, LOCAL 2001,

Union.

INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, DISTRICT COUNCIL
15, LOCAL 159, AFL-CIO,

Intervenor.

No. 19-CA-090932; 19-CA-090948;
19-CA-095926

**REPLY TO OPPOSITION OF THE
BOEING COMPANY TO MOTION
FOR RECUSAL OF CHAIRMAN AND
CERTAIN MEMBERS OF THE
NATIONAL LABOR RELATIONS
BOARD**

1. The Boeing Company largely mimics the arguments made by Counsel for General Counsel. The Boeing Company ignores the principal problem that the Board in the *Boeing* case overruled *Caesars Entertainment Corp.*, 362 NLRB 190 (2015). But for that specific overruling of the case, the Painters would not have the same interest in this case. Had the Board not specifically overruled *Caesars Entertainment*, we understand that intervention might not have been appropriate.

2. The Boeing Company and the General Counsel ignore the ethical issues in this case. We understand that the ethical issues about Member Emanuel's participation and former Chairman Miscimarra's participation are now pending before the Inspector General and are being investigated. The Board should take no action until after that investigation is completed. If the Inspector General determines there was no ethical violation by either Member Emanuel or former Chairman Miscimarra, then the issues raised assume a far different posture. If unethical conduct is found or inappropriate is found, then this case should receive the same treatment as the Board did in *Hy-Brand*, Case 25-CA-163189, et al.

3. Boeing and the General Counsel suggest the members of the Board should make their own individual determinations. Chairman Miscimarra can't make that decision since he is now long-gone and is back at his former law firm, Morgan, Lewis & Bockius. Member Emanuel has made it clear that he is incapable of making that decision since he participated improperly in the *Hy-Brand* case. The public should not allow members of the Board to determine their own ethics when these questions and particularly when they are being investigated by the Inspector General. Such decisions must be reviewable by the Board or the Courts of Appeals.

4. The Declaration of Michael Fitzsimmons should be stricken. Michael Fitzsimmons has no personal knowledge of who at Morgan, Lewis & Bockius participated in any case. More importantly, he doesn't comment upon former Chairman Miscimarra's participation in this case or any other case.

5. This case is quite unusual. Two members of the Board, Member Emanuel and former Chairman Miscimarra should not have participated. Those issues have been raised by the

Proposed Intervenor which does have an interest in the outcome of this case. More importantly, the public has an interest in this issue.

6. The Board should grant the Motion to Intervene and hold any decision on the merits of the motion until after the Inspector General has completed any investigation. If the Inspector General does not complete an investigation, the Board will then have to decide this motion.

Dated: May 8, 2018

Respectfully Submitted,

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: /s/ David A. Rosenfeld
DAVID A. ROSENFELD

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PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On May 8, 2018, I served the following documents in the manner described below:

REPLY TO OPPOSITION OF THE BOEING COMPANY TO MOTION FOR RECUSAL OF CHAIRMAN AND CERTAIN MEMBERS OF THE NATIONAL LABOR RELATIONS BOARD

- ☒ (BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kkempler@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 8, 2018, at Alameda, California.

/s/ Karen Kempler
Karen Kempler